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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

VARNER, STEVE M

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 09/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,774

Applicant(s)

SPRAGUE, GARY

Examiner

Steve M Varner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 9,10,19 and 20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11-18,21,23 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION

Claims 9, 10, 19, 20, are cancelled.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4, 5, 21, 23, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1, 2, of U.S. Patent No. 6,434,905. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Regarding claim 1, Sprague claim 1 teaches a housing with at least one mating surface.

Sprague claims a pair of mating clamp members shaped and structured to clamp onto the panel such that the pair of clamp members respectively constrain opposing major surfaces of the panel, with at least one clamp member of the pair of clamp members having a mating surface located to be in contact with the at least one mating surface of the housing.

Sprague claims actuation hardware.

Sprague claims the mating surface of the housing and the mating surface of the clamp member is inclined relative to the driven direction so that a least a portion of at least one clamp member of the pair of clamp members will move in a clamping direction, which is different than the driven direction, when the clamp member is driven in the driven direction by the actuation hardware wherein clamping forces, caused by the movement of the clamp member in the clamping direction, are sufficient to secure the panel.

Regarding claim 4, Sprague claim 1 teaches the actuation hardware is a screw and a nut.

Regarding claim 5, Sprague claim 1 teaches a first inclined surface oriented to be generally inclined with respect to the first plane and a second inclined surface oriented to be generally inclined with respect to the first plane. Sprague claims a first clamp member with an inclined surface located adjacent to the first inclined surface of the housing and oriented to be approximately parallel to the first inclined surface of the housing and a pane-clamping surface. Sprague claims a second clamp member with an inclined surface located adjacent to the second inclined surface of the housing and oriented to be approximately parallel to the second inclined surface of the housing and a pane-clamping surface. Sprague claims a screw and a nut threadably engaged with the screw.

Regarding claim 21, Sprague claim 1 teaches a housing, at least one clamp member shaped and structured to clamp onto the panel, at least one screw, and an

Art Unit: 3635

elongated nut strip. Sprague does not claim the nut strip formed as a separate piece from the at least one clamp member and threadably engaged with the at least one screw. It is well known in the art to make nut strips formed as a separate piece and threadably engaged with at least one screw. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a separate nut strip with screw threads in the structure of Sprague to allow the screw to tighten the clamps.

Regarding claim 23, Sprague claim 1 teaches a housing having a pair of mating surfaces, a pair of mating clamp members with each clamp member of the pair of clamp members having a mating surface located to respectively be in contact with the pair of mating surfaces of the housing, and actuation hardware.

Claims 2, 3, 6, 7, 11-18, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6434905, Sprague in view of Boeckx.

Regarding claim 2, Sprague claims the basic claimed structure. Sprague does not claim an accessory channel space. Boeckx shows the housing defines an accessory channel space (18). (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use an accessory channel space as in Boeckx in the structure of Sprague to allow space for hardware.

Regarding claim 3, Sprague claims the basic claimed structure. Sprague does not claim the housing is unitary. Boeckx shows the housing is unitary. (Fig. 1) It would

Art Unit: 3635

have been obvious to one of ordinary skill in the art at the time the present invention was made to use a unitary housing as in Boeckx in the structure of Sprague.

Regarding claim 6, Sprague claims the basic claimed structure. Sprague does not claim a first and second channel wall. Boeckx shows a first and second channel wall. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a first and second channel wall as in Boeckx in the structure of Sprague to protect the hardware.

Regarding claim 7, Sprague claims the basic claimed structure. Sprague does not claim the screw accessed through an accessory channel. Boeckx's screw can be accessed through an accessory channel (18). (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a screw accessed through the accessory channel as in Boeckx's in the structure of Sprague in order to turn the screw.

Regarding claim 11, Sprague claims the basic claimed structure. Sprague does not claim a first pad adjacent to the pane-clamping surface of the first clamp member and a second pad adjacent to the pane-clamping surface of the second clamping member. Boeckx shows a first pad (13) adjacent to the pane-clamping surface of the first clamp member and a second pad (14) adjacent to the pane-clamping surface of the second clamp member. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a first and second pad as in Boeckx in the structure of Sprague to grip the pane.

Regarding claim 12, Sprague claims the basic claimed structure. Sprague does not claim the first and second inclined surfaces of the housing between 25 degrees and 35 degrees from the first pane. It would be an obvious design choice to have the first and second inclined surfaces of the housing between 25 degrees and 35 degrees from the first pane to provide a surface, which the screw can drive the clamp against to hold the pane.

Regarding claim 13, Sprague claims the basic claimed structure. Sprague does not claim the first and second clamp to be within 2 degrees of the first and second inclined surfaces of the housing. It would be an obvious design choice for the inclined surfaces of the first and second clamp to be within 2 degrees of the first and second inclined surfaces of the housing. This would create friction between the first and second clamp and the first and second inclined surfaces of the housing.

Regarding claim 14, Sprague claims the basic claimed structure. Sprague does not claim the inclination of the inclined surface of the first clamp member or second clamp member from the first plane approximately 1 degree greater than the inclination of the first or second inclined surface of the housing from the first plane. It would be an obvious design choice to have the inclination of the inclined surface of the first clamp member or second clamp member from the first plane approximately 1 degree greater than the inclination of the first or second inclined surface of the housing from the first plane. This would create friction between the first and second clamp and the first and second inclined surfaces of the housing.

Regarding claim 15, Sprague claims the basic claimed structure. Sprague does not claim the first and second inclined surfaces of the housing to have equal inclinations. It would be an obvious design choice for the first and second inclined surfaces of the housing to have equal inclinations. This would create friction between the first and second clamp and the first and second inclined surfaces of the housing.

Regarding claim 16, Sprague claims the basic claimed structure. Sprague does not claim the fastener out of metal. Boeckx discloses his fastener out of metal. (Abstract) Aluminum is an obvious design choice metal.

Regarding claim 17, Sprague claims the basic claimed structure. Sprague does not claim an anodized finish. An anodized finish is an obvious design choice for aluminum.

Regarding claim 18, Sprague claims the basic claimed structure. Sprague does not claim the screw oriented substantially parallel to the first plane. Boeckx shows the screw oriented substantially parallel to the first plane. (Fig. 1) Applicant fails to show criticality for a parallel screw; therefore, it would be an obvious design choice.

Claim Objections

Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 22 is allowable for a portion of the nut strip located adjacent to the first clamp member, and a portion of the nut strip located adjacent to the second clamp member.

Allowed Claims

Claim 8 is allowed for the hardware being located at least substantially in the accessory channel space.

Response to Arguments

Applicant's arguments with respect to claims 1-7, 11-18, have been considered but are moot in view of the new ground(s) of rejection.

Sprague claims a pair of clamp members. It is now used in an obviousness type double patenting rejection with Boeckx.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lu presents a doorframe. Husting et al. shows an adjustable wall jamb. Horgan, Jr. teaches a door shoe assembly. Yates discloses glass door and window structures.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-08390839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Art Unit: 3635

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV

September 23, 2002

A handwritten signature, possibly reading 'SV', written in black ink.A handwritten signature of Carl D. Friedman, written in black ink.

Carl D. Friedman
Supervisory Patent Examiner
Group 3600